

CHAPTER VIII

HOUSING

Section 2. Eviction Cases

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A. Legal Standards for Eviction Cases

1. The Scope of This Section

This section discusses housing eviction cases under the FEHA. These are cases in which the complainant claims the respondent expelled the complainant, by legal process, from some housing accommodation, and that the respondent did this because of the complainant's protected status (race, sex, national origin, etc.). Eviction cases usually have multiple complainants.

- The analysis for eviction cases discussed in this section is also applicable to other kinds of housing adverse actions involving inferior terms, conditions, privileges, or services, such as discriminatory rent increases and unequal access to facilities. It is also the same basic analysis used in employment "Termination Cases" (see Section 1 of Chapter VII).
- Eviction cases may also involve other acts of harm, such as unlawful inquiries or statements of preference, which have separate remedies and are distinct from the eviction itself. These acts of harm should be analyzed separately from the eviction.
- "Association" cases involving evictions are also discussed in this section. These are cases in which the respondent takes an adverse action (e.g., eviction, rent increase) against the complainant because the complainant associated with someone who falls within a protected group.
- Many retaliation cases involve evictions, but the special problems of housing retaliation are discussed in Section 3 of Chapter VIII (Reserved).
- Note that the housing section of the FEHA is different from the employment section in that it covers only seven protected bases: race, color, religion, sex, marital status, national origin, and ancestry. Age housing discrimination, however, is covered as "arbitrary" discriminatory under the Unruh Civil Rights Act, as is physical handicap and blindness.
- The analyses for Unruh housing complaints which allege a form of "arbitrary" discrimination (e.g., age, sexual orientation, families with children, etc.) will be discussed in a separate reserved section, see "Unruh", Chapter IX. These complaints as well as Unruh non-housing complaints (e.g., restaurants, theaters, or any business establishment) on a named basis or as "arbitrary" discrimination are currently discussed in Directive 22.

2. The Legal Standards

a. Eviction Cases

Eviction cases focus on Issue II and use the same basic "causal link" legal standard as employment "standard" termination cases. If the complainant falls within a group protected by the FEHA, discrimination is shown if:

- 1) The respondent took some "adverse action" (e.g., eviction) against the complainant; and
- 2) A "causal connection" exists between the complainant's protected status and the adverse action.

In order to show the requisite "causal connection," the complainant's protected status need only be "a factor" or one of several factors influencing the respondent to take the adverse action. For a full discussion of the "causal link" standard, see "Discussion of the Legal Standard" in the "Termination Cases" section of the employment part of this manual (Section 1 of Chapter VII).

b. Association Cases (Eviction)

Housing "association" cases are those complaints in which the respondent takes an adverse action (eviction, increased rent) against the complainant because the complainant is associating with some other person who falls within a group (race, sex, ancestry, etc.) protected by the FEHA.

The most typical eviction "association" case is based on race. In this type of case, the respondent usually decides to evict the complainant only after it learns of the race (or other protected basis) of the person with whom the complainant is associating. The other person may be a spouse, child, friend, roommate, or visitor.

Association cases use the same basic "causal link" legal standard under Issue II as eviction cases, with one difference. Instead of a causal connection between the adverse action and the complainant's protected status, association cases require that the causal link be shown between the respondent's adverse action and the complainant's associating with another person who falls within a protected group. Therefore, if it can be shown that the respondent evicted the complainant because the complainant associated, for example, with a Black, the respondent will be liable under Issue II. The complainant's "association" need only be "a factor" in order to show the requisite causal link. In addition, the complainant does not actually have to be "associating" with a person of a protected group. If the respondent perceives that the complainant is associating with such a person, that will be sufficient to meet the legal standard.

B. Analysis of Eviction Cases

The analysis of eviction cases focuses on Issue II and is basically the same as the analysis of employment "standard" termination cases (see Section 1 of Chapter VII).

Since respondents rarely admit under Issue II that they were motivated by the protected status of the complainant, the Commission looks to various kinds of "indirect" evidence to prove the "causal link." The following analytical outline, therefore, contains relevant questions representing the most typical kinds of evidence that may appear in an eviction case. These questions are only a starting point for your own analysis. Always ask what logically fits each case and what else should logically be considered.

Eviction cases sometimes involve additional acts of harm distinct from the eviction itself, such as unlawful inquiries and statements of preference. These additional acts of harm are separate adverse actions for which there are separate remedies. For this reason, they should be analyzed separately from the eviction, each one represented by its own Issue and relevant questions. There is no need to repeat evidence that has already been reported under previous relevant questions. Simply write the Issue and relevant questions and refer back to the relevant evidence.

1. Analytical Outline (Eviction)

II. Discrimination

Did the respondent evict the complainant because of the complainant's protected status (race, sex, etc.)?

Relevant Questions:

- A. Did the adverse action (the eviction) actually happen?
- B. Is the respondent's reason for the eviction factually accurate?
- C. Does the respondent's treatment (in terms of eviction) of similarly situated persons indicate that the eviction occurred because of the complainant's protected status?
- D. Does the respondent's application of the pre-eviction procedures to similarly situated persons indicate that the eviction occurred because of the complainant's protected status?
- E. Does the relevant statistical pattern indicate that the eviction occurred because of the complainant's protected status?
- F. Is there any direct evidence to link the eviction to the complainant's protected status?
- G. Is there any anecdotal evidence to link the eviction to the complainant's protected status?
- H. Other relevant questions?

2. Additional Issue and Relevant Questions for Association Cases (Eviction)

The preceding analytical outline may also be used along with the questions below to analyze "association" eviction cases. Use the Issue question below, which focuses on the "association" legal standard, and add the following important relevant questions to the ones already on the eviction outline. In questions C-G, remember to change the phrase "because of the complainant's protected status" to "because of the complainant's association with a person of a protected group" (e.g., a person who is Black, Mexican, etc.). This will properly focus the question on the "association" legal standard.

II. Discrimination

Did the respondent evict the complainant because of the complainant's association with a person of a protected group?

Relevant Questions (Add these to the eviction analytical outline)

- A. Did the respondent have knowledge or perceive that the complainant was associating with a person of a protected group?
- B. Does the timing of the eviction indicate that it occurred because of the complainant's association with a person of a protected group?
- C. Does the respondent's treatment of the complainant before and after the respondent learned of the complainant's "association" indicate that the eviction occurred because of the complainant's association with a person of a protected group?

C. The Law: Sources of the Legal Standards for Eviction Cases

1. Statute

FEHA (Government Code) Sections 12927(a)-(e), 12955(a)-(g), 12956, 12986, 12987 (remedy), and 12995(a)-(d)

2. Precedential Decisions

Association Cases

DFEH v. Jack and Shirley Anderson (1979) FEHC Dec. No. 79-05. Race association (female complainant dating a Black male) - rent increase; retaliation for opposing race association discrimination (eviction).